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YOX v. TRU-ROL, CO:

***The Court of Appeals of Maryland Established a Rule for
Determining when the Statute of Limitations Will Begin to Run
for Workers' Compensation Claims Arising out of
Occupational Deafness***

By: Ayodeji O. Badaki

In *Yox v. Tru-Rol Co.*, 380 Md. 326, 844 A.2d 1151 (2004), the Court of Appeals of Maryland held that claims for compensation stemming from occupational deafness must be filed within two years after the date when the employee (1) first suffered the requisite degree of hearing loss; and (2) first had actual knowledge that the disablement was caused by the employment. *Id.* at 328, 844 A.2d at 1152. In establishing this two-part test, the court clarified uncertainty surrounding occupational deafness claims in Maryland, and set forth the criteria under which the statute of limitations on such claims will begin to run. *Id.*

Arnold C. Yox ("Yox") worked for Tru-Rol Company, Inc. ("Tru-Rol") for more than forty-seven years as a press operator. Throughout his employment, Yox was exposed to loud noise. In September 1987, Yox visited an ear, nose, and throat specialist seeking treatment for hearing loss and throat pain. The tests conducted by the specialist in 1987 revealed that Yox suffered hearing loss significant enough to rise to the level of compensable hearing loss under Maryland's Workers' Compensation laws. Yox acknowledged that he was aware in 1987 that his hearing loss was directly related to his employment, but continued to work for Tru-Rol until 1999. Yox did not receive any further medical attention until 2000.

In July 2000, Yox filed a workers' compensation action against Tru-Rol claiming occupational hearing loss due to prolonged exposure to industrial noise. In response to this claim, Tru-Rol raised a statute of limitations defense, pursuant to MD. CODE ANN., LAB. & EMPL. § 9-711 ("Section 9-711"), asserting that Yox's claim was barred because it was brought more than two years after Yox first had actual

knowledge that the hearing loss was caused by the employment. The Workers' Compensation Commission ("Commission") determined that the test for occupational deafness is whether there was a disablement and whether the employee knew he had a hearing loss attributable to his employment. The Commission further determined that because the record revealed an affirmative answer to both, Yox's claim was barred by the statute of limitations.

Thereafter, the Circuit Court for Baltimore County reversed the decision of the Commission on grounds that the Section 9-711 limitation does not begin to run until the hearing loss gives rise to the incapacity to work. The circuit court found that because Yox did not suffer any wage loss or earning impairment, his hearing loss did not give rise to "incapacity to work" and the limitations period, under Section 9-711, did not begin to run. The court of special appeals reversed the circuit court's judgment, holding that the limitations period in an occupational deafness case begins to run when the hearing loss becomes compensable under MD. CODE ANN., LAB. & EMPL. § 9-505 ("Section 9-505"), or when the employee first has actual knowledge that the disability was caused by the employment. The Court of Appeals of Maryland granted *certiorari* to review the court of special appeals' decision.

The court began its analysis by examining the law in Maryland regarding occupational deafness. *Id.* at 330-36, 844 A.2d at 1153-57. In so doing, it paid particular attention to three sections of the Labor & Employment Article of the Maryland Code: Section 9-502 (regarding compensation for occupational disease), Section 9-505 (specifically dealing with occupational deafness as an occupational disease) and Section 9-711 (the statute of limitations provision for claims arising out of occupational disease). *Id.* at 336, 844 A.2d at 1156-57.

The court noted that Section 9-502 is the general section requiring compensation for injuries due to occupational disease. *Id.* at 335, 844 A.2d at 1156. Section 9-502 specifically requires an employee seeking compensation for occupational disease to be "disabled," as defined under Section 9-502. *Id.* Disablement under Section 9-502 is defined as "the event of a covered employee becoming partially or totally incapacitated: (1) because of an occupational disease; and (2) from performing the work of the covered employee in the last

occupation in which the covered employee was injuriously exposed to the hazards of the occupational disease." *Id.*

The court noted, however, that under Section 9-505, occupational deafness claims do not share the same "disablement" requirement as all other occupational disease claims. *Id.* at 337, 844 A.2d at 1157. Section 9-505 requires an employer to provide compensation to a covered employee for hearing loss due to industrial noise in the frequencies of 500, 1,000, 2,000, and 3,000 hertz. *Id.* at 336, 844 A.2d at 1157. The court of appeals observed that Section 9-505 makes no mention at all of "disablement," but only requires a certain level of hearing loss be present in order for a covered employee to be entitled to compensation. *Id.* Given this language, the court reasoned, the definition of "disabled" provided under Section 9-502 does not apply to Section 9-505 claims for occupational deafness. *Id.* at 337, 844 A.2d at 1157.

The court next attempted to reconcile the provisions of Section 9-505 with the statute of limitations provisions in Section 9-711. *Id.* at 336, 844 A.2d at 1157. Section 9-711 provides that all compensation claims stemming from occupational disease must be filed either within two years after the date of "disablement" or death, or within two years after the date when the covered employee or the dependents of the covered employee first had actual knowledge that the "disablement" was caused by the employment. *Id.* The court reasoned that although Section 9-505 makes no mention of "disablement" directly, the specified levels of hearing loss detailed in Section 9-505, in effect, set forth an objective standard for determining "disablement" for the purpose of establishing the commencement of Section 9-711's statute of limitations. *Id.* at 337, 844 A.2d at 1157.

The court held that, with regard to occupational deafness, Section 9-711's statute of limitations must be read to mean that a claim for occupational hearing loss must be filed within two years after the date when the employee (1) first suffered the requisite degree of hearing loss (as defined in Section 9-505), and (2) first had actual knowledge that the disablement was caused by the employment. *Id.* at 338, 844 A.2d at 1158. Utilizing this interpretation of Section 9-711, the court of appeals held that Yox's claim was properly rejected because Yox suffered hearing loss under Section 9-505, and had actual

knowledge that this hearing loss was caused by his employment almost thirteen years before he filed his claim. *Id.*

Yox v. Tru-Rol marks an important clarification of Maryland law regarding workers' compensation cases stemming from occupational deafness. Before *Yox*, the language of Section 9-505 appeared to excuse occupational deafness claims from the two year limitations period applicable to all other occupational disease claims. Plaintiffs claiming occupational deafness were able to bring claims for an indefinite period after the onset of their work-related hearing loss. *Yox*, however, establishes a clear rule under which commencement of the statute of limitations for occupational deafness claims can be easily identified.